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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2008 179

CYNTHIA SIDRA PELSTON
1420 N. Alta Vista Boulevard, Apt. 415
Los Angeles, California 90046

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).

2. On or about March 20, 2008, the Board received an application for a Respiratory Care Practitioner License from Cynthia Sidra Pelston (Respondent). On or about March 14, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on July 23, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code), unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3732, subdivision (b) of the Code states:

"The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . .

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“ . . .

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

“ . . . ”

8. Section 3750.5 of the Code states:

1 "In addition to any other grounds specified in this chapter, the board may
2 deny, suspend, or revoke the license of any applicant or license holder who has
3 done any of the following:

4 " . . . "

5 "(b) Used any controlled substance as defined in Division 10 (commencing
6 with Section 11000) of the Health and Safety Code.

7 " . . . "

8 9. Section 3752 of the Code states:

9 "A plea or verdict of guilty or a conviction following a plea of nolo
10 contendere made to a charge of any offense which substantially relates to the
11 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
12 a conviction within the meaning of this article. The board shall order the license
13 suspended or revoked, or may decline to issue a license, when the time for appeal
14 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
15 order granting probation is made suspending the imposition of sentence,
16 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
17 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
18 setting aside the verdict of guilty, or dismissing the accusation, information, or
19 indictment."

20 10. California Code of Regulations, Title 16, section 1399.370, states:

21 "For the purposes of denial, suspension, or revocation of a license, a crime
22 or act shall be considered to be substantially related to the qualifications, functions
23 or duties of a respiratory care practitioner, if it evidences present or potential
24 unfitness of a licensee to perform the functions authorized by his or her license or
25 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
26 acts shall include but not be limited to those involving the following:

27 " . . .

28 "(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

1 “...”

2 COST RECOVERY

3 11. Section 3753.5, subdivision (a) of the Code states:

4 "In any order issued in resolution of a disciplinary proceeding before the
5 board, the board or the administrative law judge may direct any practitioner or
6 applicant found to have committed a violation or violations of law to pay to the
7 board a sum not to exceed the costs of the investigation and prosecution of the
8 case."

9 12. Section 3753.7 of the Code states:

10 "For purposes of the Respiratory Care Practice Act, costs of prosecution
11 shall include attorney general or other prosecuting attorney fees, expert witness
12 fees, and other administrative, filing, and service fees."

13 13. Section 3753.1, subdivision (a) of the Code states:

14 "An administrative disciplinary decision imposing terms of probation may
15 include, among other things, a requirement that the licensee-probationer pay the
16 monetary costs associated with monitoring the probation."

17 FIRST CAUSE FOR DENIAL OF APPLICATION

18 (Conviction of a Crime)

19 14. Respondent's application is subject to denial under Code sections
20 3750, subdivision (d), 3752, and California Code of Regulations, Title 16, section
21 1399.370, subdivision (b), in conjunction with Code section 3732, subdivision (b), in that
22 she was convicted of crimes substantially related to the qualifications, functions and duties
23 of a respiratory care practitioner. The circumstances are as follows:

24 April 30, 1999 Conviction

25 A. On or about March 28, 1999, a Claremont police officer responded
26 to a report of annoying telephone calls that Respondent was receiving at her
27 residence. The police officer noticed that Respondent appeared to be very anxious,
28 could not sit still, and was talking very rapidly. She told the officer that she was a

1 recovering illegal drug user. Based upon her statements and objective symptoms,
2 the officer determined that Respondent was under the influence of a controlled
3 substance. When Respondent picked up a box off the floor of her room and told
4 the officer he could look inside the box, he found items used to ingest controlled
5 substances, including two metal spoons with burn marks, one of which had a piece
6 of wet brown cotton on it which is commonly used to filter heroin. He also found
7 additional items used to ingest controlled substances including cotton swabs, a
8 knife, and two syringes. When the officer asked Respondent if she had any drugs
9 in her room, she said that she had used them all. Respondent was arrested for
10 being under the influence of a controlled substance, possession of drug
11 paraphernalia, and possession of a syringe without a permit.

12 B. On or about April 13, 1999, in Los Angeles County Municipal
13 Court, Pomona Judicial District, Complaint No. 9PM02344, Respondent was
14 charged with use/under the influence of a controlled substance, in violation of
15 Health and Safety Code section 11550, subdivision (a), a misdemeanor (Count 1),
16 possession of a pipe/paraphernalia, in violation of Health and Safety Code section
17 11364, a misdemeanor (Count 2), and possession of a syringe without a permit, in
18 violation of Business and Professions Code section 4140, a misdemeanor (Count
19 3).

20 C. On or about April 30, 1999, Respondent was convicted upon her
21 plea of nolo contendere to use/under the influence of a controlled substance,
22 possession of a pipe/paraphernalia, and possession of a syringe without a permit.
23 She was placed on probation for three years with terms and conditions including;
24 serve 90 days in county jail; pay a laboratory fee of \$50.00; pay restitution of
25 \$100.00 to the victim; complete a live-in drug rehabilitation program and not leave
26 without the court's permission; not use or possess any narcotics or dangerous drugs
27 or paraphernalia; not associate with drug users, sellers or buyers; and obey all laws
28 and orders of the court.

1 D. On or about September 27, 1999, at a probation violation hearing,
2 Respondent admitted that she violated probation by leaving the live-in drug
3 rehabilitation program without permission from the court.

4 E. On or about August 21, 2000, the court found that Respondent
5 violated her probation by having a conviction of forgery in Los Angeles Superior
6 Court Case No. KA045613. Respondent's probation was terminated, and she was
7 sentenced to state prison for 16 months (with credit for 30 days), which was
8 concurrent with her sentence in Case No. KA045613.

9 September 27, 1999 Conviction

10 F. In February and March 1999, Respondent forged her grandmother's
11 name on four stolen checks, and then cashed the checks in the total amount of
12 \$700.00 at Bank of America and Pomona First Federal Bank and Trust. In
13 February and March 1999, Respondent took her mother's ATM card and withdrew
14 \$660.00 from the account without her mother's knowledge or permission. On or
15 about April 11, 1999, Respondent was arrested by the Claremont Police
16 Department for forgery.

17 G. On or about September 27, 1999, in Los Angeles County Superior
18 Court Complaint No. KA045613, Respondent was charged with forgery, in
19 violation of Penal Code section 470, subdivision (d), a felony. She was convicted
20 upon her plea of nolo contendere to forgery.

21 H. On or about August 21, 2000, probation was denied, and the court
22 sentenced Respondent to 16 months in state prison (with credit for 30 days). This
23 sentence was concurrent with her sentence in Case No. 9PM02344. Respondent
24 was also ordered her to pay a restitution fine in the amount of \$200.00, make
25 restitution to the victim, and pay a parole restitution fine of \$200.00 (stayed).

26 SECOND CAUSE FOR DENIAL OF APPLICATION

27 (Use of a Controlled Substance)

28 15. Respondent's application is subject to denial under Code sections

1 3750.5, subdivision (b), in conjunction with Code section 3732, subdivision (b), in that
2 she used a controlled substance. The facts and circumstances set forth in Paragraph 12,
3 Subparagraphs A through E of this Statement of Issues, are incorporated herein by
4 reference.

5 THIRD CAUSE FOR DENIAL OF APPLICATION

6 (Commission of a Fraudulent, Dishonest or Corrupt Act)

7 16. Respondent is subject to disciplinary action under section 3750,
8 subdivision (j), of the Code in that she committed a fraudulent, dishonest or corrupt act
9 substantially related to the qualifications, functions, or duties of a respiratory care
10 practitioner. The facts and circumstances set forth in Paragraph 12, Subparagraphs F
11 through H of this Statement of Issues, are incorporated herein by reference.

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters
14 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

15 1. Denying the application of Cynthia Sidra Pelston for a Respiratory
16 Care Practitioner License;

17 2. Directing Cynthia Sidra Pelston to pay the Respiratory Care Board
18 the costs of the investigation and enforcement of this case, and if placed on probation, the
19 costs of probation monitoring; and

20 3. Taking such other and further action as deemed necessary and
21 proper.

22 DATED: October 9, 2008

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25 Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
26 Complainant
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